

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Gilbert Curtis Louis,

Case No. 3:08CV930

Plaintiff

v.

ORDER

Terry Collins, et al.,

Defendant

This is a pro se prisoner civil rights case in which I entered an order on July 8, 2008, dismissing the complaint. [Doc. 5]. Plaintiff did not file his notice of appeal until October 9, 2008. Facing dismissal of his appeal as untimely, plaintiff notified the Court of Appeals that he had not received notice of the dismissal until August 28, 2008.

The Court of Appeals has remanded this case “for the limited purpose of considering the notice of appeal as a Fed. R. App. P. 4(a)(6) motion to reopen the appeal period.” *Curtis v. Collins*, No. 08-4531 (12/9/09).

In addition to his own assertions that he did not receive timely notice, plaintiff states that the envelope containing the dismissal order was dated September 3, 2008. [He apparently learned informally about the dismissal on August 28, 2008]. In addition, he submitted independent

verification of his contention that he did not receive legal mail during July, 2008, in the form of a handwritten notation by a prison official to that effect. [Doc. 20, at 12].

It appears that, for whatever reason, plaintiff did not receive timely notice that his complaint was dismissed. That being so, his notice of appeal should be treated as a Fed. R. App. P. 4(a)(6) motion to reopen the appeal period.

It is, therefore,

ORDERED THAT:

1. Cause therefore being shown, plaintiff's notice of appeal be, and the same hereby is treated as a motion to reopen the appeal period, and as such, be, and the same hereby is granted *instantly*;

2. Prior orders re. payment of appellate filing fees confirmed; fees paid thus far to be applied against fee due and owing on filing of further notice of appeal.

So ordered.

s/James G. Carr
James G. Carr
Chief Judge